SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 440

THE UNITED STATES, PETITIONER

vs.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

	Original	Print
Petition for writ of certiorari	1	1
Record from Court of Claims	14	8
Petition	14	8
Exhibit "A," statement of amounts due	19	11
General traverse	22	13
Argument and submission	22	13
Special findings of fact	23	13
Conclusion of law	28	15
Judgment	29	16
Clerk's certificate [omitted in printing]	30	16
Order allowing certiorari		17

1 In the Supreme Court of the United States

October term, 1928

No. ——

THE UNITED STATES, PETITIONER

v.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY

Petition for a writ of certiorari to the Court of Claims

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above-entitled cause in favor of the respondent in the sum of $475.17 on June 18, 1928.

The question presented

The sole question involved is one of law, whether, under the provisions of the land-grant acts and the land-grant equalization agreement, the United States in making payment to land-grant railroads and other carriers which have agreed to equalize their charges with the rates paid to land-grant roads is entitled to land-grant deductions from commercial charges for the transportation of the
2 authorized number of (private) mounts of Army officers when such mounts are used in the military service of the United States and are transported at Government expense on change of station orders of such officers.

Statement

This was a suit to recover $560.80 which was deducted by the accounting officers of the United States from freight charges claimed by the respondent for the transportation of the authorized (private) mounts of Army officers changing station and of enlisted men accompanying said mounts as attendants.

The findings show that at various times within six years of the filing of the petition in the Court of Claims the United States, through the Quartermaster Department of the Army, shipped on Government bills of lading a number of authorized (private) mounts of Army officers ordered to change station, for which the respondent as final carrier claimed its charges computed at full tariff rates as required for the transportation of prjvate property.

The respondent is not a "land-grant" or "bond-aided railroad," but in order that respondent might compete with such railroads for the transportation of troops and property of the United States it became a party to the so-called "freight land-grant equalization

agreement" (Finding III), hereinafter mentioned, whereby it agreed to accept the same rates of pay for the transportation of property for which the United States is lawfully entitled to reduced rates over such land-grant or bond-aided railroads as such
3 land-grant or bond-aided roads are entitled to receive for such transportation.

Petitioner's accounting officers made settlements and paid for said services at tariff rates less lawful land-grant deduction required for the transportation of property of the United States in accordance with the provisions of the land-grant statutes and the land-grant equalization agreements.

The Court of Claims, without rendering an opinion, gave judgment in favor of the respondent in the sum of $475.17, which represents the amount deducted for land grant on account of the transportation of the mounts only, and in effect followed its former decisions holding that the United States was not entitled to such deductions from charges for the transportation of the authorized private mounts of Army officers on change of station.

The land-grant statutes

The three general provisions in the land-grant acts which state the conditions under which troops and "property" of the United States shall be transported over land-grant or bond-aided railroads are as follows:

The act of March 3, 1863, c. 98, sec. 3, 12 Stat. 772, 773, provides that—

"• • • said railroads and branches shall be and remain public highways for the use of the Government of the United States, free from all toll or other charge upon the transportation of *any property* or troops of the United States." (Italics ours.)

4 The act of July 25, 1866, c. 242, sec. 5, 14 Stat. 239, 241, provides that—

"• • • said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the Government of the United States."

The act of July 27, 1866, c. 278, sec. 11, 14 Stat. 292, 297, provides that—

"• • • said • • • railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation."

The so-called freight land-grant equalization agreement entered into by and between the Quartermaster Corps and the carriers, in-

cluding this respondent, which have received no grants of land or bonds to aid them in the construction of their railroads, is as follows:

"The carriers * * * agree * * * to accept for the transportation of property moved by the Quartermaster Corps, United States Army, and for which the United States Government is lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available, as derived through deductions account of land-grant distance from a lawful rate filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement." (Appendix No. 9, Manual for the Quartermaster Corps, 1916, Vol. II, pp. 223, 226, superseded by Quartermaster General Circular No. 15, May 18, 1922.)

The several acts of Congress providing for the number of authorized mounts of Army officers, money allowance to officers owning their mounts, transportation and maintenance thereof, and for their purchase in lieu of transportation, are as follows:

"Authorized number of mounts

"* * * and forage in kind may be furnished to the officers of the Army by the Quartermaster's Department only for horses owned and actually kept by such officers in the performance of their official military duties when on duty with troops in the field or at such military posts west of the Mississippi River, as may be from time to time designated by the Secretary of War, and not otherwise as follows:

To the general, five horses;
To the lieutenant general, four horses;
To a major general, three horses;
To a brigadier general, three horses;
To a colonel, two horses;
To a lieutenant colonel, two horses;
To a major, two horses;
To a captain (mounted), two horses;
To a lieutenant (mounted), two horses;
To an adjutant, two horses;
To a regimental quartermaster, two horses.

"(Act of June 18, 1878, c. 263, sec. 8, 20 Stat. 143, 150; U. S. C. Title 10, sec. 801; AR 605-130, 3/15/22.)

"Transportation and maintenance of mounts

"* * * and for the authorized number of officers' horses, including bedding for the animals; and nothing in the act making appropriations for the legislative, executive, and judicial expense of the Government for the fiscal year nineteen hundred and eight, or any other act, shall hereafter be held or construed so as to deprive officers of the Army, wherever on duty in the military service of the United States, of forage, bedding, shoeing, or shelter for their authorized number of horses, or of any means of transportation or

maintenance therefor for which provision is made by the terms of this act * * *. (Act of March 2, 1907, c. 2511, 34 Stat. 1158, 1166; act of March 3, 1909, c. 252, 35 Stat. 742; U. S. C. Title 10, sec. 804.)

6 "* * * and hereafter transportation may be furnished for the owned horses of an officer, not exceeding the number authorized by law, from point of purchase to his station, when he would have been entitled to and did not have his authorized number of owned horses shipped upon his last change of station, and when the cost of shipment does not exceed that from his old to his new station. (Act of March 23, 1910, c. 115, 36 Stat. 243, 255; U. S. C. Title 10, sec. 808.)

"Mounts furnished officers below grade of major and money allowance to officers owning their mounts

"* * * that hereafter the United States shall furnish mounts and horse equipments for all officers of the Army below the grade of major required to be mounted, but in case any officer below the grade of major required to be mounted provides himself with suitable mounts at his own expense he shall receive an addition to his pay of one hundred and fifty dollars per annum if he provides one mount, and two hundred dollars per annum if he provides two mounts. (Act of May 11, 1908, c. 163, 35 Stat. 106, 108; U. S. C. Title 10, secs. 802 and 805.)

"Purchase of mounts in lieu of transportation

"* * * that hereafter when a mounted officer is ordered * * * to make a change of station in the United States in which the cost of transportation for his authorized number of owned horses exceeds the sum at the time allowed for that purpose in Army Regulations, the Secretary of War is authorized, under such regulations in respect to inspection and valuation as he may prescribe, in his discretion to permit the purchase of said horses by the Quartermaster's Department, at a price not exceeding the average contract price paid for horses during the preceding fiscal year, the exact price to be fixed by a board of officers. (Act of March 23, 1910, c. 115, 36 Stat. 243, 254; U. S. C. Title 10, sec. 811.)

7 Army regulations

The various provisions of Army regulations pertaining to the authorized number of private mounts of Army officers required to be mounted are as follows:

"Transportation of private mounts

"PAR. 1098. AR 1913, 1917. The Quartermaster Corps will transport for officers changing station * * * the number of horses for

which they are legally entitled to forage, and an attendant to accompany the horses when necessary, subject to the following restrictions:

"1. That the expense to the United States shall not exceed $100 for each horse transported.

* * * * * * *

"3. That the horses are owned by the officer and are intended to be used by him at his new station in the public service.

"PAR. 25. AR 30-965, 6/1/23. *When authorized.*—a. The authorized number of private mounts of officers designated as mounted officers (paragraphs 1 and 2, AR 605-130), together with an attendant, when necessary, will be transported at Government expense in the following cases, *provided the horses are owned by the officer, are intended to be used by him at his new station, and are suitable mounts*, viz:

"(1) Officers changing station, subject to the restrictions contained in paragraph 26.

"(2) Graduates of the United States Military Academy, who, upon first assignment to station, will be designated as mounted officers (paragraph 1, AR 605-130)." (Italics ours.)

"PAR. 27. AR 30-965, 6/1/23. *Certificate required.—a.* All private mounts turned over to a quartermaster for shipment must be accompanied by a certificate, signed by the owner—

"(1) Stating that the mounts are authorized mounts and *are intended for use in the public service at his new station.*" (Italics ours.)

8 "Maintenance of private mounts

"PAR. 1086. AR 1913, 1917. * * * Authorized private mounts of officers will similarly at Government expense be stabled, shod, foraged, and supplied with veterinary treatment and medicine * * *. (Par. 3, AR 605-130, 3/15/22.)

"Pay for use of private mounts furnished by officers below grade of major

"PAR. 1273. AR 1913, 1917. Officers below the grade of major, required to be mounted, whether permanently or temporarily, will be furnished with a proper mount by the Quartermaster Corps. Such officers may, however, provide themselves with suitable mounts at their own expense and of their exclusive ownership, and any officer of the grades indicated who so provides himself shall receive an addition to his pay of $150 per annum if he provides one mount and $200 per annum if he provides two mounts. (AR 35-1720, 1/6/26.)

"Standard fixed for private mounts

"PAR. 1272. AR 1913, 1917. The private mounts, owned and provided by officers of all grades in the Army, for which the Govern-

ment expends public funds in the matter of maintenance and care, shall be of a standard fixed by the Secretary of War from time to time. (Changes, AR No. 76, 7/31/18.)

"Purchase and sale of mounts

"PAR. 1095, AR 1913, 1917, as changed by Changes, AR 87, 4/3/19. * * * When a mounted officer purchases a horse under the provisions of this paragraph, he shall not be permitted to sell him, prior to the expiration of one year from the date of purchase from the Government, except to another officer at a price to be agreed upon between seller and buyer or back to the Government at a price to be determined in the manner indicated above; provided, that where an officer has requested authority to sell a horse back to the Government under the provisions of this paragraph and the board convened to examine the horse finds that he is more than 10 years of age or that he is no longer fit for an officer's mount nor for the military service by reason of unsoundness or defects, the officer shall then be free to dispose of the said horse as he may see fit. The limitation of this paragraph on the subsequent sale of a horse purchased from the Government shall apply, for the period of one year from the date of purchase from the Government, to any officer who may become the owner of such horse. (Par. 3, AR 605-140, 6/30/28.)

9 Assignments of error

In the view of the petitioner the Court of Claims erred as follows:

1. In giving judgment in favor of the respondent, and in effect concluding that the United States has no "property" right or interest in and to the authorized private mounts of Army officers used in the military service which entitles the Government to make and retain land grant deductions from commercial charges for transportation of such mounts at Government expense on change of station of the officer.

2. In concluding that the words "property of the United States" as used in the land-grant statutes and in the land-grant equlization agreement must be construed as relating to property the legal title and absolute ownership of which are actually lodged in the United States at the time it is transported at Government expense.

10 Reasons for granting the writ

1. The technical and limited construction placed upon the words "property of the United States" appears to be contrary to the intention of the Congress as expressed in the land-grant acts, and as thus construed by the Court of Claims the United States is unjustly deprived of its right to reduced rates over land-aided roads and other carriers which have agreed to equalize their rates with such land-grant roads, for the transportation of property not actu-

ally owned by the United States such as property leased or rented and used in the public service.

2. The administrative and accounting officers of the Government have uniformly held that the transportation of the authorized number of horses required for the official use of Army officers in the performance of their military duties, whether owned by the officers of the Government, is transportation of property for the official use of the Government and subject to the land-grant deductions authorized for the transportation of "property of the United States." (AR 30-965, 6/1/23; 26 Comp. Dec. 569; 3 Comp. Gen. Dec. 703.)

This question was first presented to the Court of Claims in the case of Illinois Central R. R. Co. v. United States, 52 C. Cls. 53,
11 wherein the railroad sued to recover the land-grant deductions made upon transportation of authorized private mounts of officers when such officers were ordered to overseas duty and mounts were transported to their homes. The Court of Claims held that, since there was no authority to transport such mounts at public expense, the Government was not liable for any deductions made from such bills. The same effect is the decision by the Court of Claims in the case of A. T. & S. F. R. R. C. v. United States, 55 C. Cls. 339, citing the Illinois Central decision, and pointing out that, since the mounts are property of the officers and not the United States, there is no authority for the Government to pay for the transportation of the same at public expense, and therefore no recovery could be granted for these deductions. Notwithstanding these decisions the accounting officers of the Government continued to pay for such transportation at land-grant rates. The question was again raised in the case of Oregon-Washington Railroad and Navigation Co. v. United States, 58 C. Cls. 645, where it was held that, since the mounts were the property of the officers and not of the United States, the Government was not entitled to the benefit of land-grant rates. When in 1923 the question of taking an appeal in that case was presented to Solicitor General Beck, he decided against it saying; "Amount too small to justify expense, especially as point involved doubtful." The accounting officers still continue to settle similar claims at land-grant rates.

12 3. The words "property of the United States" as used in the land grant acts and the equalization agreement have never been construed by this court, and until that shall be done there will be a constant difference of opinion between the administrative and accounting officers and the railroads generally as to the "property" of the United States in the authorized number of private mounts of Army officers when such mounts are used in the military service and are transported at Government expense. The continuance of this controversy will result in a decided increase in the already large number of accumulated suspensions and partial settlement of similar claims of both land-grant and nonland-grant roads now pending in the General Accounting Office.

4. While the amount involved in this case is small, it is at once apparent that under present regulations and unforseen conditions which might arise in the future necessitating the transfer of large bodies of troops, with officers required to be mounted, the question is of large financial importance to both the Government and the railroads.

For the reasons stated it is respectfully submitted that a final determination of the question involved is of sufficient importance to warrant the granting of the writ of certiorari to review the judgment of the Court of Claims in this case.

13 Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.
HERMAN J. GALLOWAY,
Assistant Attorney General.
LOUIS R. MEHLINGER,
Attorney.

SEPTEMBER, 1928.

14 In Court of Claims of the United States

No. F-139

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, PLAINTIFF

VS.

THE UNITED STATES

(Land-grant roads—Transportation of private mounts of Army officers)

I. *Petition*

Filed April 28, 1926

The Honorable Court of Claims:

The Galveston, Harrisburg & San Antonio Railway Company, plaintiff, respectfully represents:

15 I

Plaintiff is a corporation duly organized under the laws of the State of Texas, and as such corporation now is, and was during all the times hereinafter mentioned, engaged as a common carrier in the transportation of passengers and freight in and through various States of the United States. Part of the lines of railroads operated by plaintiff were constructed with the aid of grants of land by the United States.

II

Under the acts of Congress granting lands in aid of railroads and acts of Congress regulating the expenditure of appropriations by the United States for Army transportation over such land-grant railroads, so far as same may be applicable, said land-grant railroads were required to transport troops and munitions of war and property of the United States at not exceeding fifty per centum of the rates paid by private parties for the same kind of service; but in none of said acts were said land-grant railroads required, nor have they ever agreed, to transport at such reduced rates any property other than property of the United States.

III

At and prior to the times when the services hereinafter mentioned were performed, the railroad companies of the United States generally, including claimant, had severally agreed with the Quartermaster General of the United States Army (subject to certain exceptions not necessary here to be stated) to accept, for the transportation of property moved by the Quartermaster's Department, United
16 States Army, and for which the United States Government was lawfully entitled to reduced rates over land-grant roads (i. e., property of the United States), the lowest net rates lawfully available as derived through deductions account of land-grant distance from a lawful rate filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement. Said agreements and a list of carriers participating are set forth in Appendix No. 9 to Manual for the U. S. Quartermaster Corps, 1916, Vol. II, pp. 223, 229–230, which was superseded by Quartermaster General Circular No. 15, May 18, 1922.

IV

At various times within six years of the filing of this petition (with one exception hereinafter noted) the United States, through the Quartermaster's Department of the Army shipped as freight over certain railroads, a number of horses, being the authorized private mounts of Army officers changing station, said shipments being in each instance upon the Government form of bill of lading prescribed by the Comptroller of the Treasury (14 Comp. Dec. 967, et seq.), prepared and furnished by the Quartermaster's Department of the Army, and calling for tariff rates, and stipulating for payment to last carrier upon presentation of the accomplished bill of lading.

For the aforesaid transportation plaintiff, as last carrier, rendered its bills to the defendant on the prescribed form of Government voucher, at what it believed to be the full rates authorized by the applicable tariffs on file with the Interstate Commerce Commission, submitting with its said bills the duly accomplished bills of

17 lading covering said shipments, but in settling its said bills the accounting and disbursing officers of the Government wrongfully and erroneously disallowed and deducted certain amounts on account of land-grant distance, under the presumed authority of the aforesaid railroad land-grant laws and equalization agreements, and paid plaintiff only the reduced amounts for said transportation provided for the transportation of property of the United States, although said horses were the personal property of said officers of the Army. And plaintiff says it accepted payment for said transportation in such reduced amounts under protest.

Annexed hereto and made a part hereof is a statement, marked "Exhibit A to the petition," showing in detail the transactions above referred to, the amounts due plaintiff therefor at full tariff rates, the amounts paid plaintiff therefor, and the balances due plaintiff, aggregating $588.52.

The shipment covered by Government bill of lading No. 118 (included in Exhibit A to this petition) was made in 1917, but plaintiff's bill therefor (Q. 3720-10) was paid as rendered and the deduction complained of was made from another bill of plaintiff's for other transportation in Settlement T-79864-W, April 13, 1925.

In some instances the amounts stated in said Exhibit A to the petition are less than the amounts originally billed by plaintiff on account of its said bills having been based on combinations via routes which would not allow the Government the lowest through rates.

V

Wherefore, plaintiff says there is now justly due and owing it by the United States the sum of $588.52, exclusive of all just
18 credits and set-offs, for which amount it prays judgment, no assignment or transfer of the aforesaid claims or any interest therein having been made.

Plaintiff has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against that Government, and believes the facts stated in this petition to be true.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,
Plaintiff.

By CHARLES H. BATES,
Its Attorney in Fact.

HARR & BATES,
Attorneys for Plaintiff.

[*Duly sworn to by Charles H. Bates; jurat omitted in printing.*]
(Power of attorney filed in No. A-227.)

19 *Exhibit A to petition*

Amounts due Galveston, Harrisburg and San Antonio Railway Co. account transportation of private amounts of Army officers for War Department

Company Bill No.	Bill of lading No.	Bill of lading Date	Amount paid	Balance due
Q-9966-11	1140969	11/10/21	$152.37	$32.13
War F. D. check 163644, 2/1/23, vou. 90-94. Tariff Counties I. C. C. No. 1087, Foudn's I. C. C. No. 100.				
Q-1542-2	1232972	1/1/24	150.01	43.19
War warrant 1926, check 63914, 9/25/24. Sett. T-75873-W, 9/16/24. Tariff Counties I. C. C. No. 1140.				
Q-2081-10-A	1384681	10/22/24	147.91	29.79
War warrant 26705, check 88808, 4/30/25. Sett. 79234-W, 5/25/25. Tariff Counties I. C. C. No. 1140.				
Q-9420-3-A	1058609	3/2/21	106.35	52.33
Check 172367, 3/17/23, vou. 3786-87 Carl Halla F. O. Tariff G. W. Love I. C. C. No. 4442.				
Q-2081-10-B	1387714	10/21/24	138.41	19.59
War warrant 26857, check 88943, 5/6/25. Sett. T-76324-W, 5/1/25. Tariff Lelands I. C. C. No. 1551.				
Q-2431-4	1166207	4/3/25	108.26	12.10
War warrant 1546, check 91314, 9/9/25. Sett. T-80758-W, 4/31/25. Tariff Lelands I. C. C. No. 1551.				
Q-2082-10	1232391	9/9/24	278.93	21.07
War warrant 321, check 90340, 7/27/25. Sett. T-80152-W, 7/17/25. Tariff Counties I. C. C. No. 1135.				
Q-2082-10	591350	10/24/24	171.10	18.20
War warrant 321, check 90340, 7/27/25. Sett. T-80152-W, 7/17/25. Tariff Counties I. C. C. No. 1140.				
Q-1476-1	1191768	9/6/23	119.36	5.64
War warrant 1805, check 65821, 9/16/24. Sett. T-75785-W, 9/11/24. Tariff Lelands I. C. C. No. 1551.				
20 Q-436-8	1100469	6/21/22	79.48	11.75
Check 222312, 5/26/23, vou. 3699. Carl Halla F. O. Tariff Lelands I. C. C. No. 1501.				
Q-514-9	1024978	6/30/22	360.34	19.97
(Deducted from bill Q-1895-8) War warrant 26469, check 88824, 4/23/25. Sett. T-79146-W, 4/17/25. Tariff Cottrells I. C. C. No. A-55, Lelands I. C. C. No. 1481.				
Q-1586-3	1293347	3/1/24	194.22	16.89
War warrant 3558, check 67100, 11/24/24. Sett. T-76088-W, 11/19/24. Tariff Curletts I. C. C. No. A-79, Lelands I. C. C. No. 1579.				
Q-1721-5	1293372	4/16/24	154.07	18.49
War warrant 3035, check 66710, 11/6/24. Sett. T-76441-W, 11/1/24. Tariff Curletts I. C. C. No. A-79, Leland's I. C. C. No. 1551.				

Company Bill No.	Bill of lading No.	Date	Amount paid	Balance due
Q-1891-8	1335214	8/5/24	$259.17	$21.24

War warrant 27150, check 89156. Sett. T-79411-W, 5/9/25. Tariff Curletts I. C. C. No. A-79, Lelands I. C. C. No. 1579.

Q-3729-10	118	9/15/17	232.76	31.19

(Deducted from bill Q-1728-5)
War warrant 26343, check 88537. Sett. T-79064-W, 4/13/25. Tariff used same commercial rates as G. A. O. did without I. G. Bs.

Q-2074-10	1383325	9/4/24	248.69	39.42

War warrant 2123, check 91652, 10/14/25. Sett. T-80034-W, 9/21/25. Tariff Curletts I. C. C. No. A-79, Lelands I. C. C. No. 1579.

Q-9921-10	999453	9/21/21	146.28	10.07

War warrant 17379, check 37697, 2/5/23. Sett. TN-W-6673a, 1/20/23. Tariff Lelands I. C. C. No. 1501.

Q-8468-6-B	9/6958	5/20/20	156.95	24.59

Check 24887, 4/6/21, vou. 1383. E. D. Hopkins F. O. Tariff, Curletts I. C. C. No. 239, Lelands I. C. C. No. 1357.

Q-1656-4-A	1221554	1/15/24	124.95	26.10

(Deduction made from bill Q-2079-10-A)
War warrant 27520, check 89419, 5/28/25. Sett. T-79014-W, 5/25/25. Tariff Mallory I. C. C. No. 125-I., Fondas I. C. C. No. 148.

21 Q-1911-8-B	804148	7/19/24	254.28	3.72

War warrant 25153, check 87093, 3/23/25. Sett. T-78400-W, 3/16/25. Tariff Lelands I. C. C. No. 1551.

Q-2317-2	1286549	1/26/25	284.80	7.14

War warrant 28440, check 94686, 6/30/25. Sett. T-80048-W, 6/26/25. Tariff Lelands I. C. C. No. 1703.

Q-2317-2	1405293	1/23/25	151.91	35.58

War warrant 28440, check 94686, 6/30/25. Sett. T-80048-W, 6/26/25. Tariff Wilcox I. C. C. No. A-143, Lelands I. C. C. No. 1551.

Q-1337-11-A	1244734	7/7/23	119.93	21.72

Paid $120.40, war warrant 24815, check 87400, 3/17/25. Sett. T-78284-W, 3/6/25. Paid .53, war warrant 48, check 90187, 7/3/25. Sett. T-80109-W, 6/30/25. 68 cents additional authorized by reconsideration of review A-8615, 11/9/25 not paid. Tariff Curletts I. C. C. No. A-79, Lelands I. C. C. No. 1579 and Items 6, etc., page 257, Consolidated Classes 3.

Q-1899-8	483559	7/12/24	195.69	17.80

War warrant 27030, check 89069, 5/14/25. Sett. T-79399-W, 5/7/25. Tariff Curletts I. C. C. No. A-79, Lelands I. C. C. No. 1579.

Q-1069-7-A	114925	6/26/23	244.80	17.22

War warrant 25164, check 87026, 3/25/25. Sett. T-78509-W, 3/17/25. Tariff Glenns I. C. C. No. 397, Glenns I. C. C. No. A-313, Lelands I. C. C. No. 1710.

Company Bill No.	Bill of lading No.	Bill of lading Date	Amount paid	Balance due
Q-614-11	1029586	6/30/22	$157.59	$31.59

(Deducted from bill Q-1915-8)
War warrant 27387, check 88312, 5/26/25. Sett. T-70541-W, 5/20/25. Tariff used same commerce rates as G. A. O.

Total balance due $588.52

22 *II. General traverse*

Filed June 26, 1926

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

HERMAN J. GALLOWAY,
Assistant Attorney General.

L. M. R.

III. Argument and submission

On May 31, 1928, this case was argued and submitted on merits by Mr. William R. Harr, for the plaintiff, and by Mr. L. R. Mehlinger, for the defendant.

23 *IV. Special findings of fact and conclusion of law*

Filed June 18, 1928

This case having been heard by the Court of Claims upon a stipulation of facts signed on behalf of plaintiff by its attorneys, Harr & Bates, and on behalf of defendant by Assistant Attorney General Herman J. Galloway, the court makes the following

Special findings of fact

I

Plaintiff is a corporation duly organized under the laws of the State of Texas, and as such corporation now is, and was during all the times hereinafter mentioned, engaged as a common carrier in the transportation of passengers and property in and through various States of the United States.

II

Under the acts of Congress granting lands in aid of rail-
24 roads and acts of Congress regulating the expenditure of appropriations by the United States for Army transportation over such land-grant railroads, so far as same may be applicable, said land-grant railroads are required to transport troops and prop-

erty of the United States at not exceeding fifty per centum of the rates paid by private parties for the same kind of service.

III

At and prior to the times when the services hereinafter mentioned were performed, the railroad companies of the United States generally, including plaintiff, had severally agreed with the Quartermaster General of the United States Army to accept, for the transportation of property moved by the Quartermaster's Department, United States Army, and for which the United States Government was lawfully entitled to reduced rates over land-grant roads, the lowest net rates lawfully available as derived through deductions account of land-grant distance from a lawful rate filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement. Said agreements and a list of carriers participating are set forth in Appendix No. 9 to Manual for
25 the U. S. Quartermaster Corps, 1916, Vol. II, pp. 223, 228-230, which was superseded by Quartermaster General Circular No. 15, May 18, 1922.

IV

At various times within six years of the filing of the petition in this cause (with one exception hereinafter noted) the United States, through the Quartermaster's Department of the Army, shipped on Government bills of lading a number of horses which were the authorized private mounts of Army officers changing station.

For the aforesaid transportation plaintiff, as last carrier, rendered its bills to the defendant on the prescribed form of Government voucher at full commercial rates authorized by tariffs on file with the Interstate Commerce Commission and submitted with its said bills the duly accomplished bills of lading covering said shipments.

In some instances the bills were paid by disbursing officers of the Army in the amounts claimed by the plaintiff. Subsequently defendant's accounting officers, when passing upon the disbursing officers' paid accounts, disallowed and deducted from bills due the plaintiff for other transportation services certain amounts on
26 account of land-grant and paid plaintiff only the reduced amounts required to be paid for the transportation of property of the United States. In other instances the bills were paid upon direct settlements of the accounting officers on the basis of land-grant rates as for property of the United States.

The shipment covered by Government bill of lading No. 118 (included in Exhibit A to the petition) was made in 1917, but plaintiff's bill therefor (Q. 3720-10) was paid as rendered and the deduction complained of was made from another bill of plaintiff's for other transportation in settlement T-79064-W, April 13, 1923.

V

The appropriations from which payment was made for the transportation of the authorized private mounts of Army officers changing station are contained in the annual Army appropriation acts under the subhead "Transportation of the Army and its supplies," and the payments made to plaintiff in the present case were from said appropriations.

VI

The amounts disallowed or required to be deducted by disbursing officers of the Army, or disallowed by the accounting officers of the United States, on account of land grant from the published tariff rates, in the settlement of plaintiff's said bills for transportation of authorized private mounts of Army officers on authorized change of station orders and enlisted men accompanying them as attendants aggregate $560.80. Of this amount there was deducted the sum of $475.17 on account of land grant for the transportation of said mounts and $85.63 on account of land grant for the transportation of said enlisted men.

VII

Plaintiff protested against such land-grant disallowances and deductions being made or required, except as to the disallowance of the two items of $7.14 and $35.58 on bill Q. 2317-2, as to which no formal protest was filed owing to the fact that the plaintiff's letter to its Washington attorney directing him to file such a protest never reached him.

VIII

It has been the uniform practice of the administrative and accounting officers of the United States following certain decisions of the former comptrollers of the Treasury and of the Comptroller General of the United States to pay the carriers from public funds the commercial rates, less the appropriate land-grant deductions required to be made from charges for the transportation of the authorized private mounts of Army officers when such mounts were shipped on change of station orders of such officers. The correctness of this practice has been disputed by the plaintiff and its connecting carriers, and payments on such basis have been accepted by them under protest.

Conclusion of law

Upon the foregoing special findings of fact, which are made part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover $475.17.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of four hundred seventy-five dollars and seventeen cents ($475.17).

29 V. *Judgment*

At a Court of Claims held in the city of Washington on the 18th day of June, A. D. 1928, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is entitled to recover.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of four hundred seventy-five dollars and seventeen cents ($475.17).

30 [Clerk's certificate to foregoing transcript omitted in printing.]

(Indorsement on cover:) File No. 33,749 Court of Claims. Term No. 440. The United States, petitioner, vs. The Galveston, Harrisburg & San Antonio Railway Company. Petition for writ of certiorari and exhibit thereto. Filed September 14th, 1928. File No. 33,749.

Supreme Court of the United States

Order allowing certiorari

Filed October 29, 1928

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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INDEX

	Page
Opinion below	1
Jurisdiction	1
The question	1
Statutes and Army Regulations	2
Statement	2
Specifications of assigned errors to be urged	10
Summary of argument	11
Argument	12
Conclusion	12
	21

CITATIONS

Cases:	
Atchison, T. & S. F. R. R. Co. v. *United States*, 55 Ct. Cls. 339	14
Illinois Central R. R. Co. v. *United States*, 52 Ct. Cls. 53	13, 16
Emergency Fleet Corporation v. *Western Union Telegraph Co.*, 275 U. S. 415	20
Oregon-Washington R. R., etc., Co. v. *United States*, 58 Ct. Cls. 645	15, 16
Statutes, etc.:	
Act of March 3, 1863, c. 98, sec. 3, 12 Stat. 772, 773	2
Act of July 25, 1866, c. 242, sec. 5, 14 Stat. 239, 241	2
Act of July 27, 1866, c. 278, sec. 11, 14 Stat. 292, 297	3
Act of June 18, 1878, c. 263, sec. 8, 20 Stat. 145, 150; U. S. C., title 10, sec. 801	4
Act of March 2, 1907, c. 2511, 34 Stat. 1158, 1160	5
Act of May 11, 1908, c. 163, 35 Stat. 106, 108; U. S. C., title 10, secs. 802, 803	6
Act of March 3, 1909, c. 252, 35 Stat. 732, 742; U. S. C., title 10, sec. 804	5
Act of March 23, 1910, c. 115, 36 Stat. 243, 254; U. S. C., title 10, secs. 808, 811	5, 6
Act of April 27, 1914, c. 72, 38 Stat. 351, 365; U. S. C., title 10, sec. 807	5
Army Regulations—	
A. R. 605-130, 3/15/22	4
A. R. 30-965, 6/1/23, pars. 25, 27	7
A. R. 1913, 1917—	
Par. 1065	9
Par. 1066	8
Par. 1068	6-7
Par. 1272	8
Par. 1273	8
23 Comp. Dec. 480	14

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 440

THE UNITED STATES, PETITIONER

v.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY

BRIEF FOR THE UNITED STATES

OPINION BELOW

The Court of Claims rendered no opinion. The Findings of Fact and Conclusion of Law upon which the judgment is predicated (R. 13–16) have not yet been reported.

JURISDICTION

The judgment of the Court of Claims was entered June 18, 1928. (R. 16.) Petition for certiorari was filed September 14, 1928 (R. 16), and the writ was granted by this Court on October 29, 1928. Jurisdiction of this Court rests on the Act of February 13, 1925.

THE QUESTION

The sole question involved is whether, under the provisions of the land-grant Acts and the land-grant equalization agreement, the United States in making payment to land-grant railroads and to other carriers which have agreed to equalize their charges with the rates paid to land-grant roads, is entitled to land-grant deductions from commercial charges for the transportation of the authorized number of private mounts of Army officers when such mounts are used in the military service of the United States and are transported at Government expense on change of station orders of such officers.

STATUTES AND ARMY REGULATIONS

The three general provisions in the land-grant Acts which state the conditions under which troops and "property" of the United States shall be transported over land-grant or bond-aided railroads are as follows:

The Act of March 3, 1863 (c. 98, Sec. 3, 12 Stat. 772, 773), provides that:

> • • • said railroads and branches shall be and remain public highways, for the use of the Government of the United States, free from all toll or other charge upon the transportation of *any property* or troops of the United States. (Italics ours.)

The Act of July 25, 1866 (c. 242, Sec. 5, 14 Stat. 239, 241), provides that:

> * * * said railroad shall be and remain a public highway for the use of the Government of the United States, free of all toll or other charges upon the transportation of the property or troops of the United States; and the same shall be transported over said road at the cost, charge, and expense of the corporations or companies owning or operating the same, when so required by the Government of the United States.

The Act of July 27, 1866 (c. 278, Sec. 11, 14 Stat. 292, 297), provides that:

> * * * said * * * railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation.

The several Acts of Congress providing for the number of authorized mounts of Army officers, money allowance to officers owning their mounts, transportation and maintenance thereof, and for their purchase in lieu of transportation, are as follows:

AUTHORIZED NUMBER OF MOUNTS

> * * * and forage in kind may be furnished to the officers of the Army, by the Quartermaster's Department, only for horses owned and actually kept by such officers in the performance of their official military

duties when on duty with troops in the field or at such military posts west of the Mississippi River, as may be from time to time designated by the Secretary of War, and not otherwise as follows:

To the general five horses;
To the lieutenant general four horses;
To a major general three horses;
To a brigadier general, three horses;
To a colonel, two horses;
To a lieutenant colonel, two horses;
To a major, two horses;
To a captain (mounted), two horses;
To a lieutenant (mounted), two horses;
To an adjutant, two horses;
To a regimental quartermaster, two horses.

(Act of June 18, 1878, c. 263, Sec. 8, 20 Stat. 145, 150; U. S. C. Title 10, Sec. 801; AR. 605-130, 3/15/22.)

TRANSPORTATION AND MAINTENANCE OF MOUNTS

• • • and for the authorized number of officers' horses, including bedding for the animals; and nothing in the Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year nineteen hundred and eight, or any other Act, shall hereafter be held or construed so as to deprive officers of the Army, wherever on duty in the military service of the United States, of forage, bedding, shoeing, or shelter for their authorized number of horses, or of any means of transportation or maintenance therefor for which pro-

vision is made by the terms of this Act * * * (Act of March 2, 1907, c. 2511, 34 Stat. 1158, 1166; Act of March 3, 1909, c. 252, 35 Stat. 732, 742; U. S. C. Title 10, Sec. 804.)

* * * and hereafter transportation may be furnished for the owned horses of an officer, not exceeding the number authorized by law, from point of purchase to his station, when he would have been entitled to and did not have his authorized number of owned horses shipped upon his last change of station, and when the cost of shipment does not exceed that from his old to his new station. (Act of March 23, 1910, c. 115, 36 Stat. 243, 255; U. S. C. Title 10, Sec. 808.)

The Act of April 27, 1914 (c. 72, 38 Stat. 351, 365; U. S. C. Title 10, Sec. 807), among other things provides that—

Provided further, That hereafter private mounts of officers in excess of the authorized mounts may be shipped on Government bill of lading with authorized mounts, and reimbursement collected for transportation charges on such excess mounts * * *.

MOUNTS FURNISHED OFFICERS BELOW GRADE OF MAJOR AND MONEY ALLOWANCE TO OFFICERS OWNING THEIR MOUNTS

* * * that hereafter the United States shall furnish mounts and horse equipments for all officers of the Army below the grade of major required to be mounted, but in case any officer below the grade of major required to be mounted provides himself with suitable mounts at his own expense, he shall

receive an addition to his pay of one hundred and fifty dollars per annum if he provides one mount, and two hundred dollars per annum if he provides two mounts. (Act of May 11, 1908, c. 163, 35 Stat. 106, 108; U. S. C. Title 10, Secs. 802 and 803.)

PURCHASE OF MOUNTS IN LIEU OF TRANSPORTATION

* * * that hereafter when a mounted officer is ordered * * * to make a change of station in the United States in which the cost of transportation for his authorized number of owned horses exceeds the sum at the time allowed for that purpose in the Army Regulations, the Secretary of War is authorized, under such regulations in respect to inspection and valuation as he may prescribe, in his discretion to permit the purchase of said horses by the Quartermaster's Department, at a price not exceeding the average contract price paid for horses during the preceding fiscal year, the exact price to be fixed by a board of officers. (Act of March 23, 1910, c. 115, 36 Stat. 243, 254; U. S. C. Title 10, Sec. 811.)

The various provisions of Army regulations pertaining to the authorized number of private mounts of Army officers required to be mounted are as follows:

TRANSPORTATION OF PRIVATE MOUNTS

PAR. 1098, AR. 1913, 1917. The Quartermaster Corps will transport for officers changing station * * * the number of

horses for which they are legally entitled to forage, and an attendant to accompany the horses when necessary, subject to the following restrictions:

1. That the expense to the United States shall not exceed $100 for each horse transported.

* * * * *

3. That the horses are owned by the officer and are intended to be used by him at his new station in the public service.

PAR. 25. AR 30–965. 6/1/23. *When authorized.*—a. The authorized number of private mounts of officers designated as mounted officers (paragraphs 1 and 2, AR 605–130), together with an attendant, when necessary, will be transported at Government expense in the following cases, *provided the horses are owned by the officer, are intended to be used by him at his new station, and are suitable mounts*, viz:

(1) Officers changing station, subject to the restrictions contained in paragraph 26.

(2) Graduates of the United States Military Academy, who, upon first assignment to station, will be designated as mounted officers (paragraph 1, AR 605–130). (Italics ours.)

PAR. 27. AR. 30–965, 6/1/23. *Certificate required.*—a. All private mounts turned over to a quartermaster for shipment must be accompanied by a certificate, signed by the owner—

(1) Stating that the mounts are authorized mounts and *are intended for use in the public service at his new station.* (Italics ours.)

MAINTENANCE OF PRIVATE MOUNTS

PAR. 1096. AR. 1913, 1917. * * * Authorized private mounts of officers will similarly at Government expense be stabled, shod, foraged, and supplied with veterinary treatment and medicine. * * * (Par. 3, AR. 605–130, 3/15/22.)

PAY FOR USE OF PRIVATE MOUNTS FURNISHED BY OFFICERS BELOW GRADE OF MAJOR

PAR. 1273. AR. 1913, 1917. Officers below the grade of major, required to be mounted, whether permanently or temporarily, will be furnished with a proper mount by the Quartermaster Corps. Such officers may, however, provide themselves with suitable mounts at their own expense and of their exclusive ownership, and any officer of the grades indicated who so provides himself shall receive an addition to his pay of $150 per annum if he provides one mount and $200 per annum if he provides two mounts. (AR. 35–1720, 1/6/26.)

STANDARD FIXED FOR PRIVATE MOUNTS

PAR. 1272. AR. 1913, 1917. The private mounts, owned and provided by officers of all grades in the Army, for which the Government expends public funds in the matter

of maintenance and care, shall be of a standard fixed by the Secretary of War from time to time. (Changes, AR. No. 76, 7/31/18.)

PURCHASE AND SALE OF MOUNTS

PAR. 1095. AR. 1913, 1917, as changed by Changes, AR. 87, 4/3/19. * * * When a mounted officer purchases a horse under the provisions of this paragraph, he shall not be permitted to sell him, prior to the expiration of one year from the date of purchase from the Government, except to another officer at a price to be agreed upon between seller and buyer or back to the Government at a price to be determined in the manner indicated above; provided, that where an officer has requested authority to sell a horse back to the Government under the provisions of this paragraph and the board convened to examine the horse finds that he is more than 10 years of age or that he is no longer fit for an officer's mount nor for the military service by reason of unsoundness or defects, the officer shall then be free to dispose of the said horse as he may see fit. The limitation of this paragraph on the subsequent sale of a horse purchased from the Government shall apply, for the period of one year from the date of purchase from the Government, to any officer who may become the owner of such horse. (Par. 3, AR. 605–140, 6/30/28.)

STATEMENT

This is a suit to recover money which was deducted by the accounting officers of the United States from freight charges claimed by the respondent for the transportation of the authorized (private) mounts of Army officers changing station and of enlisted men accompanying said mounts as attendants.

The findings of the Court of Claims show that under certain statutes lands were granted in aid of railroads and such roads were required to transport troops and property of the United States at not exceeding 50 per cent of the rates paid by private parties (R. 13); that at and prior to the times of the services involved in this suit railroad companies generally, including respondent, had agreed to accept for transportation of property of the United States moved by the Quartermaster Department of the Army and for which the Government was lawfully entitled to reduced rates over land-grant roads the lowest net rates lawfully available as derived through deductions on account of land-grant distance from a lawful rate filed with the Interstate Commerce Commission, applying from the point of origin to destination at the time of the movement (R. 14).

The Government, through the Quartermaster Department of the Army, shipped on Government bills of lading a number of horses which were the authorized (private) mounts of officers changing station.

For this service respondent as last carrier rendered its bills at full commercial rates. In some instances the disbursing officers of the Government paid the full commercial fare and later the Government accounting officers deducted sums based upon alleged appropriate land-grant distances. In other instances the accounting officers of the Government made direct settlements with respondent upon such bills and deducted the alleged appropriate land-grant allowances. (R. 14.) It has been the uniform practice of the administrative and the accounting officers of the Government to make land-grant deductions in such cases. (R. 15.) The Court of Claims held this improper and rendered judgment against the Government in the sum of $475.17 (R. 15), the amount of such land-grant deductions upon the transportation of the authorized mounts.

SPECIFICATIONS OF ASSIGNED ERRORS TO BE URGED

(1) The Court of Claims erred in giving judgment in favor of the respondent, and in effect concluding that the United States has no "property" right or interest in and to the authorized private mounts of Army officers used in the military service which entitles the Government to make and retain land-grant deductions from commercial charges for transportation of such mounts at Government expense on change of station of the officer.

(2) In concluding that the words "property of the United States" as used in the land-grant statutes and in the land-grant equalization agreement

must be construed as relating to property the legal title and absolute ownership of which are actually lodged in the United States at the time it is transported at Government expense.

SUMMARY OF ARGUMENT

Under existing regulations, which have the implied approval of Congress, the United States is obliged to bear the expense of transporting authorized private mounts of officers on change of station.

The Army Regulations allowing officers to furnish their own mounts, and providing for their care, feeding, and transportation at Government expense, show that the United States, while not the owner of the horses, has a property interest in them, and a right to require the officers to use them in the discharge of their duties, and they are property of the United States within the meaning of the Land Grant Acts. To be such, it is not necessary that the United States should be the absolute owner. It is sufficient if the property transported is in use by the United States under some arrangement with the owner giving the United States the right to the use.

ARGUMENT

We have been unable to find any statute directly authorizing the payment by the Government for transportation of authorized private mounts of Army officers upon change of station, but Army Regulations for years past have provided for the

payment of such transportation by the Government, and the accounting officers of the Government have consistently recognized and adhered to the liability of the Government to pay for the same, and where the transportation occurred over land-grant roads, land-grant deductions have been made.

The provisions of the Act of April 27, 1914 (38 Stat. 351, 365), authorizing the transportation of private mounts of Army officers in excess of authorized mounts upon Government bills of lading, and providing for the reimbursement to the Government of the cost of transportation of such excess mounts, is a recognition by Congress of the existence, the validity and the propriety of the Army regulation authorizing the payment by the Government of the transportation cost of the authorized private mounts, and is an implied approval by Congress of such regulation. Both of the portions hereinabove set out of the Act of March 23, 1910 (36 Stat. 243 at 254 and 255), would seem to have the same effect. We think it can not be seriously contended that the cost of such transportation should fall upon the Government.

This matter was first brought to the attention of the courts in the case of *Illinois Central Railroad Company* v. *United States* (52 Ct. Cls. 53), which was decided January 15, 1917. In that case the railroad company brought suit to recover land-grant deductions from the transportation charges on two horses, the authorized private mounts of an Army

officer who had been ordered from duty in Texas to duty overseas, the horses, in accordance with Army regulations, having been transported to a place designated by the army officer for safe keeping during his absence. The Court of Claims considered the case and referred in its opinion to the Act of April 27, 1914, but concluded that in the absence of a statute authorizing the payment of such transportation, a regulation of the War Department could not bind the Government, and therefore the Government was not liable for any transportation cost of these horses and, of course, the plaintiff could not, therefore, recover the land-grant deductions.

Notwithstanding this opinion by the Court of Claims the Comptroller of the Treasury (23 Comp. Dec. 480), on February 21, 1917, held that in the case of an officer changing station his authorized private mount should be transported at Government expense, less land-grant deductions, if any. Some attempt is made to distinguish the case before the Comptroller from the *Illinois Central case* upon the ground that the case before the court was one involving an officer ordered to duty beyond the seas, while the case before the Comptroller was an officer changing station.

In the case of *Atchison, Topeka and Santa Fe Railroad Company* v. *United States* (55 Ct. Cls. 339) the Court of Claims, on May 10, 1920, considered the claim of the railroad to recover the amount of land-grant deductions made from trans-

portation charges of authorized private mounts of Army officers. The court pointed out that the facts did not show whether these officers were on a change of station or otherwise, but, since the case had been argued upon the theory that they were upon a change of station, the decision would proceed accordingly. The court held that the regulation of the War Department, in the absence of a statute specifically authorizing the payment of such cost by the Government could impose no liability upon the Government, and as the Government was not obliged to pay any of the cost of such transportation, of course the plaintiff could not recover any of the land-grant deductions. The *Illinois Central case* is cited as authority. In the case of *Oregon-Washington Railroad, etc. Co.* v. *United States* (58 Ct. Cls. 645) the Court of Claims on November 19, 1923, determined that the Government was bound to pay for the transportation of the authorized private mounts of Army officers on change of station, but held that, since the horses were not the property of the Government, land-grant deductions were improper in such cases. A judgment was therefore awarded to plaintiff for the land-grant deductions.

The court concluded that, in view of the situation of Army officers, the necessity for their frequent removal from place to place, as well as the demand that their authorized private mounts accompany them, and in further view of the long

standing widely published and promulgated regulations of the Army authorizing the payment of the transportation cost of such mounts, it was inconceivable that Congress was ignorant of the situation and therefore must be assumed to have approved of the liability of the Government to pay such cost. The Act of April 27, 1914, is also cited as an implied approval by Congress. The court further says that the *Illinois Central case* did not involve a change of station, and that in the *Atchison case* it did not appear that the transportation was on a change of station.

As set out in the petition for certiorari in this case, when the *Oregon-Washington case* was decided the question as to whether the Government should seek an appeal was presented to a former Solicitor General and he decided against it, saying "Amount too small to justify expense, especially as point involved doubtful."

All during this time the administrative and accounting officers of the Government have proceeded to pay for the transportation of the authorized private mounts of Army officers on change of station and have made land-grant deductions where the transportation occurred over land-grant or equalizing carriers. In the present case the Court of Claims followed the *Oregon-Washington* decision and rendered judgment against the Government without opinion.

The statutes heretofore set out show that certain officers of the Army are required to have a certain

number of horses. Provision is made for the furnishing of these horses by the Government to officers below the grade of major, but provision is also made that in the event the Army officer below the rank of major desires to furnish his own mounts, if such horses comply with the rules and regulations and meet the inspection of the Army as to such matters as age, physical condition, and fitness to perform the necessary duties, the officer will be permitted to furnish his own horses. In the event he furnishes such horses he shall, in addition to his regular pay, receive the sum of $150 per year if one horse is furnished and $200 per year if two horses are furnished.

The statutes also provide that for authorized private mounts the Government shall provide the feed, bedding, stabling, and veterinary service if and when necessary. In other words the Government furnishes everything necessary for the care and maintenance of such horses. During this period the officer can not remove the horses from his place of duty, but they must be always available for service as mounts of such officer in connection with his official duty. By this arrangement the Government has hired from the Army officer the private mount. The Government has become a bailee of that horse, the terms of the bailment being provided by the applicable statutes and Army regulations.

The land-grant statutes and the Appropriation Acts made in pursuance thereof constitute a contract

or agreement between the United States and the carrier accepting such land grants. The railroad company, in consideration of grants of land to it by the Government agrees that it will carry the "property or troops of the United States" at reduced rates, and in accordance with the powers given to the Government by that contract the Government, in the Appropriation Acts, has provided for the amount of such reduction. By the equalization agreement the carriers of the United States, generally, including the respondent herein, agreed that for transportation of property moved by the Quartermaster Corps of the Army and for which the Government is lawfully entitled to reduced rates over land-grant roads, the carrier would accept such reduced rates.

The Government does not contend that the United States is the absolute owner of the horses in question. It does contend that such horses are "property" of the United States within the meaning of the land-grant statutes. The Government has a special property interest therein. It is well recognized that a bailee has many rights in the property which is the subject of bailment. The rights, of course, are determined and limited in accordance with the terms of such bailment.

In the case now before the Court it is apparent that under the terms of bailment certain obligations and duties with respect to the payment of hire, the furnishing of necessary feed, etc., and the general care for the horses, are imposed upon the Govern-

ment. The Government, in return, has a right to have the horses always available during the period of bailment for the services required by the statutes or Army regulations of mounted officers. The necessity for the horses accompanying the officer on a change of station so that they may be available for the official use of the officer, both before leaving the old station and after arrival at his new station, is also very apparent. Under the regulations above cited the officer can not even dispose of the authorized mount prior to the expiration of a year from the date of the purchase by him from the Government, except to another officer at a price to be agreed upon, or back to the Government, unless the horse has been determined to be unfit for further Government service.

It is respectfully submitted that the Government has certain rights in the authorized private mount of an officer. Such rights are property rights and within the strict letter of the law the horse may be said to be, under the terms of the bailment, for the time being, the property of the United States, and in the transportation thereof the Government should be given the benefit of land-grant deductions.

But we do not deem it necessary to determine whether the horse is the property of the Government in the ordinary sense that such term is used, as we contend that the horse is the property of the Government as the term is used in the land-grant statutes and within the meaning, purpose, and intent of such statutes. We have here the case of

the hiring of a horse by the Government. It can not be seriously contended that in case the Government hires property to be used in Federal service, and in the performance of that Federal service it is necessary to transport such property, the Government should pay the cost of such transportation. Occasions may often arise where the Government finds it more desirable to rent property than to purchase the same. It may well be that in case of national emergency such an arrangement would be especially desirable.

There is nothing in the land-grant statutes indicating an intent by the parties to these land-grant contracts that when the words "property of the United States" were used it was intended to include only that property to which the United States held the absolute legal title. There is every reason to believe that it was the intent of Congress as well as the intent of the carriers that this term should include property under the control of the United States which was used in the performance of governmental service, and which was transported by the Government in connection with such official service. The land-grant statutes should be given a broad and liberal meaning in order to carry out the apparent intent thereof. See *Emergency Fleet Corporation* v. *Western Union Telegraph Co.*, 275 U. S. 415.)

CONCLUSION

For the reasons above set forth it is respectfully submitted that the Government is entitled to the benefit of land-grant deductions in the transportation which is involved in this suit, and that the decision by the Court of Claims is erroneous and should be reversed.

WILLIAM D. MITCHELL,
Solicitor General.
HERMAN J. GALLOWAY,
Assistant Attorney General.

FEBRUARY, 1929.

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Office Supreme Court, U. S.
FILED
OCT 19 1928
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

No. 440. October Term, 1928.

The United States, *Petitioner*,

vs.

The Galveston, Harrisburg & San Antonio Railway Company, *Respondent*.

On Petition for a Writ of Certiorari to the Court of Claims.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

William R. Harr,
Charles H. Bates,
Attorneys for Respondent.

Press of Byron S. Adams, Washington, D. C.

IN THE

Supreme Court of the United States

No. 440. October Term, 1928.

The United States, *Petitioner*,

vs.

The Galveston, Harrisburg & San Antonio Railway Company, *Respondent*.

On Petition for a Writ of Certiorari to the Court of Claims.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

I.

Question Presented by Petition Settled by Prior Decisions of This Court and Court of Claims.

The question whether the Government is entitled to land-grant deductions on the transportation of the authorized private mounts of Army officers changing station should be regarded as settled by the decisions of this court and of the Court of Claims.

In substance it is the same question as that passed upon by this court in *Oregon-Washington Railroad & Navigation Company v. United States*, 255 U. S. 339 (affirming 54 C. Cls. 131), which involved the right of the Government to land-grant deductions upon the transportation on Government bills of lading at public expense of the household goods and other personal effects of Army officers within their change of station allowance.

In that case the Court of Claims (speaking by Judge Downey, formerly Comptroller of the Treasury) said that "the question as to the applicability of land-grant rates to this class of transportation may be regarded as settled adversely [to the Government] by the *Chicago, Milwaukee & St. Paul Ry. Co. Case* [50 C. Cls. 412] decided by this court February 8, 1915."

Upon appeal this court referred to said decision of the Court of Claims as follows (255 U. S., at pp. 344-5, italics ours):

> "The decision referred to is *Chicago, Milwaukee & St. Paul Ry. Co. v. United States*, 50 Ct. Clms. 412, and the ground of its ruling was that the freight transported was not the property of the United States, it being the effects of Army officers, and, therefore, was not entitled to land-grant deductions but was subject to the commercial tariff. Necessarily, therefore, the pending case must turn on other questions, for the property transported was the property of Army officers and subject, therefore, independently of other considerations, to the commercial rates. Appellant in the present case was paid sums less than those rates and there is left for consideration only its present right to recover the difference between

them and the land-grant rates, the latter being those that were paid.

"The Government, however, is not inclined to that limitation of the issue, and attacks the ruling of which it is the consequence, and repeats the contention decided against it in that case, and again insists that the property transported was government property and entitled to land-grant rates and all else is irrelevant. To this appellant replies that the Government did not appeal from the decision and must be considered as having accepted it. The effect is rather large to attribute to mere non-action, but we need not make further comment upon it because we think the decision of the Court of Claims was correct. *The personal baggage of an officer is not property of the United States and as such entitled to transportation at land-grant rates,* and we are brought to the grounds of recovery urged by appellant."

In a later case of the *Oregon-Washington Railroad & Navigation Company* (58 C. Cls. 645), which involved the transportation of *private mounts* as well as household goods, personal effects, etc., of Army officers changing station within their authorized allowance, Judge Downey, again delivering the opinion of the court, said (58 C. Cls. at p. 648, italics ours):

> "The property involved was in all instances the property of the individual and not of the United States, *and it is now to be regarded as settled that such property is not in any sense to be regarded as property of the United States for transportation purposes within the provisions of the land-grant acts.*"

The contention that Army officers' authorized private mounts were *quasi* public property and the Government entitled to their transportation at land-grant rates, was therefore overruled.

In that case the Court of Claims distinguished two prior cases in which it had been held that the carrier could not recover because it did not appear that the transportation of the Army officers' private mounts involved had been authorized by law. (*Illinois Central R. R. Co. v. U. S.*, 52 C. Cls. 52, and *Atchison, Topeka & Santa Fe R. R. Co.*, 55 C. Cls. 339.) But as to the case then before it the court said (58 C. Cls. at p. 650, italics ours):

> "Since the Government had lawfully undertaken to furnish the transportation *and the property transported was not property of the United States*, there was obligation to pay without right to land-grant deduction, and we have therefore directed judgment for the plaintiff * * *."

In the present case counsel for the Government, in the Court of Claims, recognized that the question as to the right of the Government to land-grant deductions on the transportation of Army officers' household goods, personal effects, etc., had been settled by the Court of Claims and this court adversely to the Government. They endeavored, however, to distinguish this case on the ground that the Government has a peculiar interest in an Army officer's authorized private mounts, owing to the fact that it makes him an allowance towards their purchase and also requires them to be used in the public service. But an Army officer's household goods and other personal effects (among which are included his professional books and uniforms) are also used by him in or in connection with the performance of his military duties, and he may receive an allowance from the Government for their purchase.

As to the personal effects and private mounts of an Army officer, Judge Downey, in his opinion in the

Oregon-Washington Railroad & Navigation Company Case, reported in 58 C. Cls. said (at pp. 648-9):

> "Regulations of the War Department have for many years provided for the transportation at Government expense of an Army officer's personal effects on change of station, the amount in pounds being related to the rank of the officer, and likewise regulations have provided for the transportation on change of station of a mounted officer's authorized mounts, the number for which, according to rank, the Government furnishes forage.
>
> "Assuming it to be determined that such property is not entitled to transportation at land-grant rates as Government property, the remaining contention is that, although its transportation at Government expense is authorized by regulation, there is no authority of law for the regulations, and that regulations without authority of law can not impose an obligation on the Government. Summarizing, the defendant says that the court is asked to decide that privately owned household goods are the property of the United States for the purpose of fixing Government liability and privately owned by Army officers for the purpose of fixing the amount of the liability.
>
> "This latter contention has an element of fallacy in it. Primarily it may be said that the liability of the Government for the transportation of property is limited to the transportation of its own property, but it does not follow that it may not obligate itself for the transportation of other property. And in the service of an Army officer is found abundant reason for doing so.
>
> "An Army officer has no fixed station such as is usually the case with civilians. He is subject to orders and must move when directed. Family ties appeal to him as to other men, the maintenance of a home means household goods, and when

> the needs of the service demand his transfer to another station it is but natural to say that, if he be not assigned to furnished quarters, his goods must go with him to his new station. His mounts, such as he must needs use in the performance of his duties, must also accompany him, and all the circumstances but tend to furnish reasons why the Government should in these cases assume an obligation as to the transportation of property not its own."

That the United States must have absolute title to the property transported in order to entitle it to land-grant deductions, and that a less interest therein is insufficient, although the property be transported by the carrier upon Government bills of lading at public expense and for a governmental purpose, was recognized by this court in *Illinois Central Railroad Co. v. United States*, 265 U. S. 209, affirming 57 C. Cls. 277, which involved the transportation of coal, stone and other articles for use in Government improvement of the Missouri River, and in which case the question of the title of the United States to the property transported was the only issue.

II.

The Restrictions in the Army Appropriation Acts upon the Payment of Land-Grant Railroads for Government Transportation Apply Only to the Transportation of Troops and Property of the United States.

It is also well settled that the provisions of the Army Appropriation Acts relating to Army transportation over land-grant railroads, are alike in their restrictions as to payment for Government transportation, in that they apply only to the transportation of troops

and property of the United States, and provide for the payment of each of the two classes of fifty per cent land-grant railroads on the same basis.

Thus the Comptroller of the Treasury, in a decision rendered January 22, 1919 (25 Comp. Dec. 520, 523), referring to the restrictions in the Army Appropriation Acts, said (italics ours) with respect to the two classes of fifty per cent land-grant railroads:

> "It appears to have been the practice, without any definite determination by the Secretary of War of what rate should be deemed just and reasonable, to adopt the authorized maximum of 50 per cent of tariff rates as the basis of settlement for the transportation of *property and troops of the United States* over said railroads.
>
> "It appears to have been the purpose of Congress, *though with slightly different form of language*, to authorize the payment of transportation of property and troops for the United States over *both* these classes of land-grant railroads *on the same basis*, unless otherwise determined by the Secretary of War, as provided for the second class of roads."

In other words, the long-continued administrative interpretation of said restrictive provisions of the Army Appropriation Acts is that they apply only to the transportation of property and troops of the United States by the two classes of fifty per cent land-grant railroads. Hence, the Comptroller of the Treasury and his successor the Comptroller General have resorted to the legal fiction of classifying certain property not owned by the United States, but transported at its expense, such as Army officers' private mounts and personal effects, as "*quasi* public property," in an effort to bring such property within the terms of the land-

grant privilege. As above shown, however, both this court and the Court of Claims have ruled otherwise.

III.

Attempt of the Comptroller of the Treasury to Avoid the Effect of the Decisions of the Courts as to What are Troops and Property of the United States Within the Meaning of the Railroad Land-Grant Acts Disapproved by Congress.

After the decision of the Court of Claims in the case of the *Chicago, Milwaukee & St. Paul Ry. Co.* (50 C. Cls. 412), above cited, holding that the Government was not entitled to land-grant deductions on Army Officers' personal effects, the Comptroller of the Treasury nevertheless refused to allow full commercial rates for such transportation on the ground that he was precluded from so doing by the above mentioned provisions of the Army Appropriation Acts restricting payment for Army transportation over land-grant railroads (22 Comp. Dec. 263, opinion dated December 14, 1915). Thereupon the matter was called to the attention of Congress, which inserted in the Army Appropriation Act approved August 29, 1916 (39 Stat. 619, 634), immediately after said restrictive provisions, the following additional proviso:

> "*And provided further*, That nothing in the preceding provisos shall be construed to prevent the accounting officers of the Government from making full payment to land-grant railroads for transportation of property or persons where the courts of the United States have held that such property or persons do not come within the scope of the deductions provided for in the land-grant Acts."

Congress thus disavowed the narrow construction placed by the Comptroller of the Treasury upon said restrictive provisions of the Army Appropriation Acts, and indicated its wish that the accounting officers of the Government, in making payment for Army transportation over land-grant railroads, should follow the decisions of the courts of the United States as to what constitutes troops and property of the United States within the meaning of the railroad land-grant Acts.

In the present case, the Comptroller General, while forced to yield to the decision of this court in the *Oregon-Washington Railroad & Navigation Company Case* (255 U. S. 339; affirming 54 C. Cls. 131) as to the *non* land-grant status of Army officers' household goods, personal effects, etc., transported by the carriers upon Government bills of lading at public expense, still insists on the correctness of his view with respect to the land-grant status of Army officers' private mounts under similar circumstances, and has prevailed upon the Department of Justice to seek a review of the matter by this court, notwithstanding said Department, in 1923, declined to take an appeal to this court from the judgment of the Court of Claims in the *Oregon-Washington Railroad & Navigation Co. Case*, 58 C. Cls. 645, above referred to, which involved the same question.

IV.

Land-Grant Privilege Not to be Extended by Construction.

The privilege of free or reduced rates for the transportation of "troops and property of the United States" secured to the Government in the railroad land-grant Acts is not to be extended by construction

to persons or property not actually troops or property of the United States. Manifestly such provisions differ materially from the provisions of such acts making grants of land to the railroads concerned. In the latter case, Congress has conferred a benefit upon the grantee, while in the former Congress is exacting something of value from the railroads. So, the Court of Claims, in the *Alabama Great Southern Railroad Company Case* (49 C. Cls. 522), held that the term "troops of the United States" as used in those Acts was not to be construed to extend to the transportation, at the expense of the United States, of State militia, since they were merely "potential" troops of the United States, and this court, in the *Union Pacific Railroad Co. Case* (249 U. S. 354), held that said term should not be construed to apply to "applicants for enlistment in the Army," since they were not actual soldiers.

In the Union Pacific Railroad Co. case just cited this court, speaking by Mr. Justice Brandeis, while recognizing the distinction drawn in the land-grant Acts between freight and property, also recognized that the term "property" as used therein had reference only to property of the United States, for he said (249 U. S. at pp. 356-7, italics ours):

> "* * * All 'property' *of the Government*, whatever its character and intended use, is to be carried 'free of toll or other charge;' but of the many persons in its service, only 'troops.'"

The cases cited settled the principle—equally applicable here—that the person or thing transported must come squarely within the terms of the privilege secured to the United States by the land-grant Acts, and be absolutely and unqualifiedly "troops or property of

the United States" and not merely possible, potential, or *quasi* troops or property of the United States; the fact that the United States may have an interest in such persons or property, or bear the expense of the transportation thereof, being held insufficient to entitle it to said privilege.

Undoubtedly the grants of public land made to the railroads by the United States in the land-grant Acts were of great value. But there were adequate considerations for these grants independently of the privilege of free or reduced rates exacted of the railroads in some of those Acts for the transportation of troops and property of the United States. Said grants were made because it was to the interest of the United States to have the transcontinental and other railroads built as promptly as possible, and when such enterprises were very hazardous and extremely expensive. The provision as to the transportation of troops and property of the United States at free or reduced rates, made in certain of those Acts, was a mere incident, and those responsible for its insertion doubtless never conceived that its value to the United States—and its corresponding expense to the railroads—would grow to the proportions it has now assumed. Consider how enormous this burden would be upon the railroads—and it applies to practically all the railroads, land-grant as well as non land-grant, because of the equalization agreements made with them by the Government—if the words "troops and property of the United States" are to be extended by construction to embrace every kind of military organization and every kind of property in which the United States has some interest or as to which it bears the expense of railroad transportation! This is the contention, however, which the Comptroller General—in the interest of governmental

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On Writ of Certiorari to the United States Court of Claims.

BRIEF FOR RESPONDENT.

WILLIAM R. HARR,
CHARLES H. BATES,
Attorneys for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX OF ARGUMENT

Page

I. Only property of the United States is entitled to transportation at land-grant rates. That United States pays for transportation of Army officers' personal property and is interested in having same transported, is insufficient to entitle Government to land-grant rates 1

II. All the private mounts of Army officers, whatever the latter's rank, are purchased and owned exclusively by them, and the United States has no property right therein.—No bailment of such mounts to the United States 4

III. Land grant privilege is not to be extended by construction to anything not property of the United States, even though the United States has a substantial interest in its transportation. 7

IV. Plaintiff and other railroads have consistently maintained their right to full commercial rates for the transportation of Army officers' private mounts, both authorized and unauthorized.... 10

AUTHORITIES CITED

Chicago, Milwaukee & St. Paul Ry. Co. v. United States, 50 C. Cls. 412 2

Emergency Fleet Corporation v. Western Union Telegraph Co., 275 U. S. 415 11

Illinois Central R. R. Co. v. United States, 265 U. S. 209, affirming 57 C. Cls. 277 3

Oregon-Washington R. R. & Nav. Co. v. United States, 255 U. S. 339, 345, affirming 54 C. Cls. 131 ..... 2, 10, 13

Oregon-Washington R. R. & Nav. Co. v. United States, 58 C. Cls. 645 ..... 2, 11, 13

United States v. Union Pacific R. R. Co., 249 U. S. 354, 356-7 9

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BRIEF FOR RESPONDENT.

I.

Only Property of the United States is Entitled to Transportation at Land-Grant Rates. That United States Pays for Transportation of Army Officers' Personal Property and is Interested in Having Same Transported, is Insufficient to Entitle Government to Land-Grant Rates.

For the purposes of the hearing of this case, respondent has filed additional copies of its brief in opposition to the petition for a writ of certiorari.

In said brief respondent discusses the railroad land-grant statutes and the decisions of the Court of Claims and of this court with respect to the status of the private property of Army officers transported by the United States upon Government bills of lading at its own expense on change of station of such officers.

It appears from said statutes and decisions that land-grant rates are only required of the railroads when the things transported are "property of the United States."

Thus, in the case of the *Oregon-Washington Railroad & Navigation Co.* (255 U. S. 339, 345), affirming 54 C. Cls. 131, this court held that—

> "The personal baggage of an officer is not property of the United States and as such entitled to transportation at land-grant rates."

The Court of Claims had made a ruling to the same effect in the prior case of the *Chicago, Milwaukee & St. Paul Railway Co.*, 50 C. Cls. 412, which decision was acquiesced in by the Government; but in the *Oregon-Washington R. R. & Nav. Co. Case*, above mentioned, the Government asked a reconsideration of said question by this court.

In a subsequent case of the *Oregon-Washington Railroad & Navigation Co.* (58 C. Cls. 645), which involved the transportation of the *authorized private mounts* of Army officers changing station, as well as of their household goods and personal effects, the Court of Claims said:

> "The property involved was in all instances the property of the individual and not of the United States, and it is now to be regarded as settled that

> such property is not in any sense to be regarded as property of the United States for transportation purposes within the provisions of the land-grant acts."

In the brief filed on behalf of the Government in this case it is stated that—

> "The Government does not contend that the United States is the absolute owner of the horses in question. It does contend that such horses are 'property' of the United States within the meaning of the land-grant statutes. The Government has a special property interest therein. It is well recognized that a bailee has many rights in the property which is the subject of bailment. The rights, of course, are determined and limited in accordance with the terms of such bailment."

The expression "property of the United States," as used in the railroad land-grant Acts, clearly means property *belonging to* the United States; *i. e.*, property to which the United States has title, as the owner thereof, and not property the title to and the possession of which is held by some one else, even though the United States has an interest in its transportation arising out of the fact that the owner of the property intends to use it partly, as in this case, or exclusively, for purposes of the Government.

That the United States must *own* the property transported in order to entitle it to land-grant rates, and a less interest therein is insufficient (although the property be transported by the carrier upon Government bills of lading at public expense and for a governmental purpose) was recognized by this court, as well as by both the litigating parties, in *Illinois Central Railroad Co. v. United States*, 265 U. S. 209, (affirming 57 C. Cls.

277,) which case involved the transportation of coal, stone and other articles for use in Government improvement of the Missouri River, and in which case the question of the title of the United States to the property transported was the only issue. This court, in that case, cited with approval the holding of the Court of Claims that land-grant rates were applicable by reason of the fact that "title to the property passed to the United States," beginning at initial point of shipment.

II.

All the Private Mounts of Army Officers, Whatever the Latter's Rank, Are Purchased and Owned Exclusively by Them, and the United States Has no Property Right Therein.—No Bailment of Such Mounts to the United States.

Both the Acts of Congress and the Army Regulations relating to the authorized private mounts of Army officers recognize the fact that *all* such mounts are owned *exclusively* by said officers.

The pertinent provisions of said Acts and Regulations are set forth on pages 3-9 of the Government's brief.

It will be noted therefrom that it is only in the case of an officer of the Army *below the grade of major*, required to be mounted—who "provides himself with suitable mounts *at his own expense*"—that Congress has authorized an addition to his pay on that account, no such allowance being made "for horses owned and actually kept" by officers of the rank of major and above, in the performance of their official military duties, and for which they are entitled to "forage in kind" under the provisions of the Act of

June 18, 1878, c. 263, sec. 8, set out on pages 3-4 of the Government's brief. It further appears from the same reference that a general is entitled to *own and keep* five such mounts, a lieutenant general four, a major general and brigadier general each three, and a colonel, lieutenant colonel and a major two such mounts.

It will also be noted that the provisions of the Acts of Congress cited by counsel for the Government invariably refer to all such mounts as the "*owned* horses" of the officers, or "as the authorized number of *owned* horses" of such officers.

Furthermore, paragraph 1273 of the Army Regulations of 1913, 1917, (p. 8 of the Government's brief), in referring to the mounts purchased by officers below the grade of major, at their own expense, expressly states that said mounts shall be "*of their exclusive ownership.*"

There is nothing in the record in this case to indicate whether the Army officers' private mounts here involved belonged to Army officers of the rank of major or above, or to Army officers below the rank of major.

The only condition in the Act of Congress of April 27, 1914, c. 72 (pp. 5-6 of the Government's brief), with reference to the additional pay to be received by an officer below the rank of major who purchases his own mounts, is that they shall be "suitable" mounts; to which condition paragraph 25 of the Army Regulations (cited on p. 7 of the Government's brief), in providing for their transportation at the expense of the United States, adds the requirement that they must be "intended to be used by him at his new station in the public service."

The provisions of Paragraph 1095 of the Army Regulations of 1913, 1917, as amended, (cited on p. 9 of the

Government's brief) have reference only to "horses held in the Quartermaster Corps unassigned, other than those at remount depots," which "may be sold to mounted officers on the authority of the department or division commander." The provision in that paragraph that the officer purchasing a horse under its provisions shall not be permitted to sell him, prior to the expiration of one year from the date of purchase from the Government, except to another officer at a price to be agreed upon between seller and buyer or back to the Government, etc., manifestly does not impair the title of the purchasing officer or make the horse the property of the United States, either within the meaning of the railroad land-grant laws or otherwise.

Neither the interest which the Government may have in an Army officer's use of his private mounts in the public service, nor the restriction on the sale of such a mount within one year if purchased from the Government under the provisions of Paragraph 1095 of the Army Regulations, nor the fact that in the case of officers below the rank of major the Government makes him an additional allowance if he purchases his own mounts—nor all of said matters—constitutes a bailment of such a mount to the Government, as contended for by counsel for the Government.

Bailment is defined by Bouvier as—

> "A delivery of something of a personal nature by one party to another, to be held according to the purpose or object of the delivery, and to be returned or delivered over when that purpose is accomplished."

and by Blackstone as—

> "A delivery of goods in trust upon a contract, either expressed or implied, that the trust shall

be faithfully executed on the part of the bailee." (2 Bla. Com. 451.)

In the case of Army officers' private mounts, the essential feature of bailment is lacking, to wit, delivery of the horse into the possession and control of the Government. The most that the officer does is to agree to use his mount in the service of the Government, himself retaining absolute possession and control of the same, as well as absolute and exclusive ownership.

Nothing in the circumstances or in the Regulations prohibits the officer from using the mounts for his own private purposes, and it seems clear that it is for this reason that the law and Regulations do *not* require *ownership* of the horses by the Government.

III.

Land-Grant Privilege is Not to be Extended by Construction to Anything Not Property of the United States, Even Though the United States Has a Substantial Interest in Its Transportation.

The privilege of free or reduced rates for transportation of "property of the United States," secured to the Government by the railroad land-grant Acts, is not to be extended by construction to anything not actually "property of the United States." Manifestly, such provisions differ materially from the provisions of such Acts making grants of land to the railroads concerned. In the one case, Congress is conferring a benefit upon the grantee, while in the other case Congress is exacting something of value from the railroads in consideration for the land-grant.

There is nothing in the nature of the land-grant Acts which justifies the extension of said privilege to

the transportation of the household goods and personal effects, the private property of Army officers when changing station, or to the private mounts of such officers either within or in excess of their change of station allowance.

A clearer understanding of this matter may be had if the living conditions attending the residence of officers and enlisted men of the Regular Army at military posts be considered, together with the policy of the Government in respect thereto. We understand that a body of soldiers may occupy a military post continuously for two or three years, in time of peace, before they are moved to another post. But there is an important difference between the living conditions of the enlisted men at such military posts and the living conditions of the officers, as well as in the attitude of the Government in respect thereto. The enlisted men are housed in barracks and are not allowed, if married, to have their wives or families with them. Such men enlist only for comparatively short periods, and if they wish to live with their families they must leave the service when their period of enlistment expires or when they otherwise obtain their discharge. The officers of the Regular Army, however, are practically in the military service for life. Such being the case, the Government has no objection to the officers being married, but, on the contrary, provides them and their families, if any, with residences at military posts. When a regiment is moved from one military post to another the *enlisted men* have practically nothing but what they can carry on their persons which is not the property of the United States. Their arms, their uniforms and *their* mounts, (if the are mounted,) all belong to the United States. In the case of the officers

of the Regular Army, however, the situation is quite different. They usually, especially if married, have a considerable amount of household goods and other personal property, including their privately owned horses, to transport to their new station.

Under the circumstances stated it is but to be expected that when a body of soldiers is ordered to another military post the Government should transport, at its own expense, a certain weight of the household goods of such officers and also such of the officers' private mounts as are intended to be used by them in the public service. The interest of the Government in the welfare of such officers and their families, as well as the fact that such property may be used in the Government service, when required, may fully justify the Government in agreeing to defray the cost of such transportation. But whether the Government may, or may not, agree to bear such cost, should not be used as an argument to increase the burdens of the land-grant railroads. The fact remains at all times that said property is *not* "property of the United States," in any sense, and that such considerations do not justify the Government in imposing the whole or even a part of the cost of such transportation upon a land-grant railroad because of a provision in the act granting public lands to such railroad, to aid in its construction, requiring such railroad to transport troops and property of the United States free or at reduced rates.

As stated by Mr. Justice Brandeis in the *Union Pacific Railroad Co.* Case, 249 U. S. 354, 356-7 (Italics ours):

> "* * * All 'property' *of the Government*, whatever its character and intended use, is to be carried 'free of toll or other charge;' but of the many persons in its service, only 'troops.' "

So, the land-grant privileges would include all "troop property," such as their mounts, arms and other equipment furnished by and belonging to the United States, because such property would be property of the United States. But an Army officer's private mounts, like his personal baggage, is his own private property, and since this court has held that the personal baggage of an Army officer is not entitled to transportation at land-grant rates, although transported at the expense of the United States (*Oregon-Washington R. R. & Nav. Co. Case*, 255 U. S. 339, affirming 54 C. Cls. 131), it necessarily follows that the private mounts of an Army officer are likewise not entitled to transportation at land-grant rates, although transported at the expense of the Government.

IV.

Plaintiff and Other Railroads Have Consistently Maintained Their Right to Full Commercial Rates for the Transportation of Army Officers' Private Mounts, both Authorized and Unauthorized.

In their brief (pp. 11, 16), counsel for the Government refer to the fact that, as set up in paragraph VIII of the special findings of fact made by the Court of Claims (Record p. 15), "it has been the uniform practice of the administrative and accounting officers of the United States, following certain decisions of the former Comptrollers of the Treasury and of the Comptroller General of the United States, to pay the carriers from public funds the commercial rates, less the appropriate land-grant deductions required to be made from charges for the transportation of the authorized private mounts of Army officers when such mounts were

shipped on change of station orders of such officers."

Counsel for the Government omit, however, to quote the further finding of the Court of Claims which immediately follows the foregoing sentence, namely, that "*the correctness of this practice has been disputed by the plaintiff and its connecting carriers, and payments on such basis have been accepted by them under protest.*"

In other words, the right of the Government to land-grant deductions on the transportation of such private mounts has been a matter of dispute between the accounting officers of the Government and the plaintiff and its connecting carriers, ever since the practice referred to first began (which date does not appear).

It is furthermore to be remembered that the Court of Claims, in the case of the *Oregon-Washington R. R. & Nav. Co.*, 58 C. Cls. 645 (1923), held that the Government was not entitled to land-grant rates on the transportation of such private mounts, and that the Department of Justice declined to take an appeal to this court in that case; and this, notwithstanding there is no finding of the court, or assertion in the Government's brief, that the facts, or the law, are any different now from what they were at that time, unless it be that the amount of the present judgment, small as it is, may be a few dollars larger than the judgment in that case.

Nor can it be contended that there is any *principle* involved at this time, that was not involved at that time.

The case of *Emergency Fleet Corporation v. Western Union Telegraph Co.*, 275 U. S. 415, cited by counsel for the Government in support of their contention that "the land-grant statutes should be given a broad and liberal meaning in order to carry out the apparent

intent thereof," has no application. There, the question was whether the Emergency Fleet Corporation was to be regarded as one of the "departments of the United States" within the meaning of the Post Roads Act of July 24, 1866, c. 230, relating to the priority to be given by telegraph companies accepting the privileges of said Act to telegraphic communications between said departments and their officers and agents, at the prices to be fixed therefor by the Postmaster General. It was held that the Emergency Fleet Corportation was such a department of the United States, because, although a private corporation, it was organized by the United States Shipping Board, all of its capital stock was subscribed and paid for by the United States, and all of its business was in the Government's interest, etc. This conclusion was reached as a matter of *fact*, and not by any enlargement of the Post Roads Act by construction. It was also pointed out that the Western Union Telegraph Company had voluntarily extended such priority and the Government rate to a large number of similar organizations of the Government ever since it accepted the provisions of the Act of June 8, 1867, and it was held that "the construction given to the Act by the United States *and acquiesced in by the Western Union*, having been both contemporaneous and thereafter consistently and widely applied, is not only persuasive but, in our opinion, decisive of the case."

In the case at bar, Army officers' private mounts are the *personal property* of such officers and are used for their personal and private purposes, as well as in the service of the Government; plaintiff and its connecting carriers have always objected to the action of the Comptroller of the Treasury and of his successor

the Comptroller General in holding that the Government was entitled to land-grant rates on the transportation of such private mounts, and, furthermore, said holding was overruled by the Court of Claims in the case of the *Oregon-Washington R. R. & Nav. Co.*, 58 C. Cls. 645, and the Government at that time declined to appeal to this Court. In other words, we have here no contemporaneous and long-continued construction of the provision of the railroad land-grant Acts in question, acquiesced in by the railroads, but, on the contrary, a construction of said Acts by Government officers which began at an uncertain date, which has always been disputed and protested against by the railroads, and which was overruled several years ago by the Court of Claims without an appeal by the Government.

Besides, this case, we submit, comes within the principle of the decision of this court in the *Oregon-Washington Case* (255 U. S. 339), holding that "the personal baggage of an [Army] officer is not property of the United States and as such entitled to transportation at land-grant rates."

Conclusion.

It is respectfully submitted that the judgment of the Court of Claims should be affirmed.

WILLIAM R. HARR,
CHARLES H. BATES,
Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 440.—October Term, 1928.

The United States, Petitioner, *vs.* The Galveston, Harrisburg & San Antonio Railway Company.	On Writ of Certiorari to the Court of Claims.

[May 13, 1929.]

Mr. Justice Butler delivered the opinion of the Court.

The Quartermaster Corps of the Army shipped on government bills of lading over the lines of respondent and connecting carriers a number of authorized private mounts of army officers ordered to change stations. Respondent was the last carrier and presented bills based on tariff rates applicable for the transportation of private property. The charges have been paid less $475.17, withheld by the Government on the ground that it is entitled to land grant deductions. This writ brings up for review a judgment of the Court of Claims for that amount.

The question for decision is whether the United States is entitled to land grant rates for the transportation of such mounts.

The United States concedes that it is liable for such transportation; but it insists that applicable statutory provisions and army regulations show that it has a property interest in the horses and the right to require the officers to use them in discharge of their duties; that they are the property of the United States within the meaning of the land grant Acts, and that therefore it is entitled to the reduced rates.

Respondent was not aided by government land grant. Some of the carriers so aided are bound to transport "property or troops of the United States" for less than commercial rates.[1] By what is known as the equalization agreement, railroad carriers, including respondent and its connections, severally agreed with the Govern-

[1] § 3, Act of March 3, 1863, 12 Stat. 773. § 5, Act of July 25, 1866, 14 Stat. 240. And see § 11, Act of July 27, 1866, 14 Stat. 297.

ment to accept for transportation, where the Government is entitled to reduced rates on lines so aided, the lowest rates available as derived through deductions on account of land grants from the regular tariff rates.[2]

The authorized number of mounts for which maintenance is allowed to each officer is fixed by statute.[3] And that number is also authorized for the purpose of transportation. It is assumed, as stated in the briefs of the parties, that officers of and above the grade of major are required to furnish their own mounts. The Government will furnish mounts and equipment for officers below that rank; but, if any such officer provides mounts for himself, he is allowed additional pay.[4] When the cost of transportation exceeds the sum allowed in army regulations, the Secretary of War may permit the purchase of such horses by the Quartermaster.[5] And the Secretary may have the authorized mounts of an officer who dies in service transported at government expense from his last duty station to the home of his family; or such horses may be disposed of as directed by representatives of the deceased.[6] The army regulations state that authorized mounts shall be transported at government expense "provided the horses are owned by the officer, are intended to be used by him at his new station, and are suitable mounts."

The right of the United States to have the concessions and allowances in respect of transportation made by the carriers in consideration of the aid given is a continuing one. It is of great value to the Government and of course correspondingly burdensome to the carriers. The terms of the obligation are to be sensibly and fairly read according to the words employed and not expanded or restricted by construction. When considering another question arising under a like provision in a land grant Act, this Court said: "It might be very convenient for the government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the *usus loquendi* is a far more

[2]Appendix No. 9 to Manual for Quartermaster Corps, 1916, Vol. II, pp. 223, 228-230.

[3]U. S. C., Tit. 10, § 901.

[4]U. S. C., Tit. 10, § 802, 803.

[5]U. S. C., Tit. 10, § 811.

[6]U. S. C., Tit. 10, § 810.

valuable aid than the inquiry what might be desirable." *Lake Superior & Mississippi R. R. Co.* v. *United States*, 93 U. S. 442, 454.

In *Alabama Great Southern R. R.* v. *United States*, 49 C. Cls. 522, it was held that when not actually in the service of the United States the men in the national guard of a State transported upon proper government requisition for participation by authority of the Secretary of War in the encampment, maneuvers and field instruction of a part of the regular army are not "troops of the United States." And see *United States* v. *Union Pacific R. R. Co.*, 249 U. S. 354. In *Oregon-Washington R. R. & Nav. Co.* v. *United States*, 58 C. Cls. 645, the court held that the effects, household goods, etc. and authorized mounts of army officers on change of stations are not government property within the purview of such Acts. And in *Oregon-Washington R. R. Co.* v. *United States*, 255 U. S. 339, 345, this Court held that the personal baggage of an officer is not property of the United States entitled to transportation at land grant rates.

We are of opinion that the principle of these decisions is controlling here. The United States demands service from its army officers which requires the use of things furnished by them. But it does not own and, as between it and them, it does not claim to own, hold or have any property rights in the uniforms, manuals, clothes, private mounts or other things by them furnished and used in the service. It would be unreasonable to hold valid the Government's claim of ownership asserted merely to secure land grant rates for the transportation of such mounts. The construction contended for is without support and cannot be sustained.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.